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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/746,641	12/21/2000	Jon R. Schroedl	SCHJ 101	9907

7590 02/05/2004
Dean A. Craine, P.S.
400 - 112th Ave. NE, Suite 140
Bellevue, WA 98004

EXAMINER

PARSLEY, DAVID J

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 02/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/746,641

Applicant(s)

SCHROEDL, JON R.

Examiner

David J Parsley

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 August 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

Detailed Action

Preliminary Amendment

1. The preliminary amendment filed 8-10-01 has been considered and entered into the application.

Information Disclosure Statement

2. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Specification

3. The application is objected to because of alterations which have not been initialed and/or dated as is required by 37 CFR 1.52(c). A properly executed oath or declaration which complies with 37 CFR 1.67(a) and identifies the application by application number and filing date is required.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-3 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear from what the lower trigger plate is offset. Further, it is unclear to where the foot bar is located in relation to the other components of the device.

Claim 1 recites the limitation "one arc portion" in page 9 line 18. There is insufficient antecedent basis for this limitation in the claim.

Claim 2 depends on claim 1 and includes all of the limitations of claim 1 thereby rendering this dependent claim indefinite.

Claim 3 recites the limitation "the soil" in page 10 lines 10-11. There is insufficient antecedent basis for this limitation in the claim.

Further, claims 1 and 3 should state that the mole trap is in combination with a foot bar in the preamble of these claims.

Claim Rejections - 35 USC § 102

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5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 3 is rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 92,823 to Harwood. Harwood discloses a method of setting a spring-activated mole trap, comprising the following steps, selecting a spring activated, two claw mole trap – see figures 1-3, having two longitudinally aligned handles – at A and/or E,G, and a trigger plate – at L, that releases a trigger rod – at K and/or H, when activated by a mole, selecting a mole tunnel opening, selecting a foot bar – at F to activate the mole trap, activating the mole trap with the foot bar – see columns 1-2, grasping the handles to move the mole trap and vertically inserting the mole trap into the mole tunnel opening so that the jaws are transversely aligned inside the mole opening and the trigger plate is positioned adjacent to the soil under the trap – see for example figures 1-3 and columns 1-2.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 615,851 to Hooker in view of Harwood or U.S. Patent No. 4,245,424 to Smith.

Referring to claim 1, Hooker discloses a spring-activated mole trap that includes two pairs of clamping jaws – at 8-9, that when released, converge to kill a mole located therebetween, the mole trap also including a trigger rod – at 6, that holds the jaws in an opened, biased position – see figure 1, and when sufficiently moved by a mole, releases the jaws thereby killing the mole, further comprising, a pair of handles – at 1,2, longitudinally aligned and extending from the jaws enabling the mole trap to be vertically aligned and inserted into a mole opening, a limiting means – at 20-22 and 22a, for the trigger rod to prevent rotation of the trigger rod when released, a pivoting trigger plate – at 5, capable of engaging the end of the trigger rod, the trigger plate being z-shaped with an upper trigger plate – at 17, and an offset lower trigger plate – at 5. Hooker does not disclose a foot bar enabling the jaws to be activated by the user's foot, the foot bar including an elongated bar with an arc-engaging surface at one end, so that when the mole trap is longitudinally on a support surface, the arc-engaging surface may be placed against one arc portion and the user's foot may be placed on the foot bar to force the jaws into a set position. Harwood and Smith do disclose a foot bar – at F of Harwood and – at 14 of Smith, enabling the jaws to be activated by the user's foot, the foot bar including an elongated bar – at the attachment of item A to item F of Harwood and – at 10 of Smith, with an arc-engaging surface at one end – see figures 1-3 of Harwood and – at 16 of Smith, so that when the mole trap is longitudinally on a support surface, the arc-engaging surface may be placed against one arc portion and the user's foot may be placed on the foot bar to force the jaws into a set position – see for example figures 1-3 and columns 1-2 of Harwood and figure 2 of Smith.

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Therefore it would have been obvious to one of ordinary skill in the art to take the device of Hooker and add the foot bar of Harwood or Smith, so as to allow for the trap to be set without injury to the user.

Referring to claim 2, Hooker as modified by Harwood or Smith further discloses the limiting means – at 22,22a of Hooker, is U-shaped – see for example figure 1 of Hooker.

Referring to claim 3, Hooker discloses a method of setting a spring-activated mole trap, comprising the steps of selecting a spring-activated two claw – at 8,9 mole trap, the mole trap having two longitudinally aligned handles – at 1,2, and a trigger plate – at 5,17, that releases a trigger rod when activated by a mole, selecting a mole tunnel opening, setting/activating the trap, grasping the handles to move the mole trap and vertically inserting the mole trap into the mole tunnel opening so that the jaws are transversely aligned inside the mole opening and the trigger plate is positioned adjacent to the soil under the trap – see for example figures 1-3 and columns 1-4. Hooker does not disclose selecting a foot bar to activate the trap and activating the trap with the foot bar. Harwood and Smith do disclose selecting a foot bar – at F of Harwood and – at 10,14,16 of Smith, to activate the trap and activating the trap with the foot bar – see for example figures 1-3 and columns 1-2 of Harwood and see figure 2 of Smith. Therefore it would have been obvious to one of ordinary skill in the art to take the method of Hooker and add the activation of the trap via the foot bar of Harwood or Smith, so as to allow for the trap to be quickly set without injury to the user.

Conclusion

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7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following patents are cited to further show the state of the art with respect to animal traps in general:

U.S. Pat. No. 69,878 to Westcott – shows mole trap

U.S. Pat. No. 91,023 to Smith – shows mole trap

U.S. Pat. No. 109,035 to Merriman et al. – shows mole trap

U.S. Pat. No. 280,811 to Gilleland et al. – shows mole trap

U.S. Pat. No. 288,225 to Gilleland – shows mole trap

U.S. Pat. No. 472,038 to Durston – shows mole trap

U.S. Pat. No. 1,256,339 to Lindquist – shows mole trap

U.S. Pat. No. 1,296,407 to Layton – shows animal trap

U.S. Pat. No. 1,382,298 to Lonk – shows burrowing animal trap

U.S. Pat. No. 1,385,024 to Russell - shows mole trap

U.S. Pat. No. 1,557,043 to Graham – shows mole trap

U.S. Pat. No. 1,729,976 to Wyman – shows mole trap

U.S. Pat. No. 1,924,241 to Hassler – shows mole trap

U.S. Pat. No. 2,432,723 to Carpenter – shows mole trap

U.S. Pat. No. 2,446,078 to Churchill – shows animal trap

U.S. Pat. No. 2,525,383 to Troutman – shows mole trap

U.S. Pat. No. 3,800,463 to Treadwall – shows trap activated via user's foot

U.S. Pat. No. 3,896,581 to Gabry – shows trap activated via user's foot

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U.S. Pat. No. 4,439,946 to Altier – shows z-shaped trigger plate

U.S. Pat. No. 4,765,087 to Holtgreffe – shows mole trap

U.S. Pat. No. 4,776,128 to Townsend – shows foot actuated mole trap

U.S. Pat. No. 5,307,587 to Zeiger et al. – shows mole trap

U.S. Pat. No. 6,038,809 to Dittrick – shows trap activated via user's foot

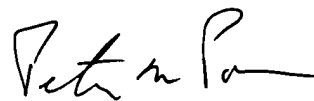
U.S. Pat. No. 6,101,761 to Sprick – shows mole trap

FR Pat. No. 2726736 – shows mole trap

DE Pat. No. 3101182 – shows mole trap

8. Any inquiry concerning this communication from the examiner should be directed to David Parsley whose telephone number is (703) 306-0552. The examiner can normally be reached on Monday-Friday from 7:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon, can be reached at (703) 308-2574.

A handwritten signature in black ink, appearing to read "Peter M. Poon". The signature is fluid and cursive, with the first and last names being more prominent.

Peter M. Poon
Supervisory Patent Examiner
Technology Center 3600